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09/880,554	06/13/2001	L. Ron Batca	4341-011	9523

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EXAMINER
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HWANG, VICTOR KENNY

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 06/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/880,554

Applicant(s)

BATCA ET AL.

Examiner

Victor K. Hwang

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 5-8, 11, 12 and 19 is/are rejected.
- 7) ☒ Claim(s) 3, 4, 9, 10 and 13-19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 June 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION*****Response to Amendment***

1. The declaration filed on March 11, 2004 under 37 CFR 1.131 has been considered but is ineffective to overcome the *O'Hearn* reference.

The evidence submitted is insufficient to establish a conception of the invention prior to the effective date of the *O'Hearn* reference. While conception is the mental part of the inventive act, it must be capable of proof, such as by demonstrative evidence or by a complete disclosure to another. Conception is more than a vague idea of how to solve a problem. The requisite means themselves and their interaction must also be comprehended. See *Mergenthaler v. Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897). Applicant's declaration provides no documentary evidence and exhibits in support thereof. See MPEP 715.07.

The evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the *O'Hearn* reference to either a constructive reduction to practice or an actual reduction to practice. Applicant's general allegation that the invention was completed prior to the date of the reference is not sufficient. *Ex Parte Saunders*, 1883 C.D. 23, 23O.G. 1224 (Comm'r Pat. 1883). A declaration by the inventor to the effect that his or her invention was conceived or reduced to practice prior to the reference date, without a statement of facts demonstrating the correctness of the conclusion, is insufficient to satisfy 37 CFR 1.131.

The evidence submitted is insufficient to establish a reduction to practice of the invention in this country or a NAFTA or WTO member country prior to the effective date of

the *O'Hearn* reference. Applicant's declaration provides no facts to prove actual reduction to practice, which would require a showing that the apparatus actually existed and worked for its intended purpose.

### *Drawings*

2. New corrected drawings are required in this application because Applicant has not responded to drawing informalities previously indicated, that reference character "56" has been used to designate support feet (Figs. 1 and 2), carriage guides (Fig. 3), and apertures (pages 8 and 9 of specification). Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid **abandonment** of the application. The requirement for corrected drawings will not be held in abeyance.

### *Claim Objections*

3. Claims 9, 13 and 19 are objected to because of the following informalities:

in claim 9, lines 3-4 and line 6, the recitations "said connecting cable" presumably should be changed to --said shared connecting cable-- to correspond to language used in claim 6 and to avoid confusion with the first and second cables of claim 8;

in claim 13, line 1, "1" presumably should be changed to --12--;

in claim 13, line 2, the recitation --, comprising first and second force applying members-- presumably should be added, in order to provide antecedent basis for "said first and second force applying members" recited on lines 2 and 3 of claim 14; and

in claim 19, the dependency presumably should be changed to depend from claim 13 or "said first and second force applying members" presumably should be changed to --said at least one force applying member-- to correspond to language used in claim 12.

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1, 2, 5-8 and 11 are rejected under 35 U.S.C. 102(e) as being anticipated by *O'Hearn* (US Pat. 6,565,490 B2). *O'Hearn* discloses an exercise machine comprising a frame structure 14; a weight stack load 34 supported by the frame structure; first and second pull handles 65,72; a dual sliding pulley assembly connected to the pull handles including first and second movable pulleys 58,64 that can be adjusted to a desired position by a user independently of one another; and a shared connecting cable 52 connecting the dual sliding

pulley assembly to the load so that either of the pull handles can be used to lift the load. The dual sliding pulley assembly further comprises a first and second sliding carriages 26 carrying the first and second movable pulleys; first and second floating pulleys 51,70; a first cable 46 or 48 connected at one end to the first sliding carriage and at the opposite end to the pull handle, the first cable passing around the first movable pulley and the first floating pulley; a second cable 46 or 48 connected at one end to the second sliding carriage and at the opposite end to the second pull handle, the second cable passing around the second movable pulley and the second floating pulley; and a third cable 50 connected at opposite ends to the first and second pulleys. The shared connecting cable 50 supports a third floating pulley 76 at one end, passes around a movable pulley 80 secured to the load, and terminates at a third force applying member 88.

6. Claims 1, 5-7 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by *Fitzpatrick* (US Pat. 4,826,157). *Fitzpatrick* discloses an exercise machine comprising a frame structure 1; a load 10 supported by the frame structure; at least one pull handle force applying member 20,21; a cable and pulley system 18,30,37,43 connecting the pull handles to the load; a bench 44 to support a user; and an adjustable brace 46 connected to the frame structure and movable between at least first and second positions, the brace functioning as a stop member to prevent the bench from sliding along column 31 during a first exercise, and functioning as a foot rest 51 for the user during a second exercise. The function of the cross-bar 51 as a foot rest is an intended use and the cross-bar is fully capable of such use. The pull handles are connected by a shared cable 18 to the load so that use of either one or both of the

first and second force applying members by the user lifts the load. The cable and pulley system includes a dual sliding pulley assembly including a first and second movable pulleys 23,24 that can be adjusted to a desired position by the user independently of one another.

7. Claims 12 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by *Webber et al.* (US Pat. 5,807,219). *Webber et al.* discloses an exercise machine comprising a frame structure 16 ; a load 22 supported by the frame structure; at least one force applying member comprising first and second pull handles 26,73; a cable and pulley system 25 connecting the force applying members to the load; a bench 71 detached from the frame structure to support a user; and an adjustable brace 58 connected to the frame structure and movable between at least first and second positions. The brace may be used as a stop member to prevent the bench from sliding during a first exercise and as a foot rest for the user during a second exercise.

#### ***Allowable Subject Matter***

8. Claims 3, 4, 9, 10 and 13-18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

9. Applicant's arguments filed March 11, 2004 have been fully considered but they are not persuasive. Applicant's declaration to remove the *O'Hearn* reference is ineffective, as noted

above. Applicant's amendment to claim 12 removed *Fitzpatrick* as a reference anticipating claims 12-15 and 19, but *Fitzpatrick* is still a reference anticipating claims 1, 5-7 and 11.

### *Conclusion*

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

*Chen* (US Pat. 5,135,451) discloses an exercise machine wherein the bench is attached to the frame structure.

*Gonzales* (US Pat. 5,277,685) discloses an exercise machine comprising an adjustable brace 120 connected to the frame structure and movable between at least first and second positions, the brace capable of functioning as a stop and as a foot rest.

*Irvine et al.* (GB 2,162,433 A) discloses an exercise machine comprising a non-adjustable brace 50 for functioning as a stop member to prevent the bench from sliding and is capable of functioning as a foot rest.

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory



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period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor K. Hwang whose telephone number is (703) 308-2865. The examiner can normally be reached Monday through Friday from 7:30 AM to 4:00 PM Eastern time. The facsimile number for submitting papers directly to the examiner for informal correspondence is (703) 746-4891. The facsimile number for submitting all formal correspondence is (703) 872-9306.

Any Inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 3700 receptionist at (703) 308-0858.



NICHOLAS D. LUCCHESI  
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TECHNOLOGY CENTER 3700



Victor K. Hwang  
May 21, 2004